

Remarks

Applicants have amended claims 23 – 28 to show that they are withdrawn.

Applicants understanding is that the Advisory Action mailed April 19, 2006, entered the amendments to claims 1 – 22 and 29. This would leave claims 6 – 9, 12, 13 and 29 pending in the application.

Applicant notes with appreciation the telephone interview courteously extended by Examiner Sperty on May 2, 2006.. During that interview, the double patenting rejections set forth in the Non-Final Office Action mailed August 25, 2005 were discussed.

Applicant's understanding is that the Response filed March 29, 2006, overcomes all of the rejection set forth in the Final Office Action except for the double patenting rejections of the Non-Final Office Action.

Applicant respectfully submits that claims 6 – 9, 12 – 13 and 29 patentably distinguishes over the references relied on in the double patenting rejections in the recitation of the secondary layer comprising 5% to 35%, by weight, of partially carbonized carbon fibers, based on the weight of the fibrous base material, wherein the partial carbonized carbon fibers are 65 to 90% carbonized.

Nowhere do the cited references disclose or suggest this.

Applicant respectfully traverses the provisional rejection of claims 1 – 22

under the judicially created doctrine of obviousness-type double patenting over claims 1 – 9 of copending Application No. 10/678,725.

Claims 6 – 9, 12 – 13, and 29 patentably distinguish over the application in the recitation of the secondary layer comprising about 5% to about 35%, by weight, of partially carbonized carbon fibers, based on the weight of the fibrous base material, wherein the partially carbonized carbon fibers are 65 to 90% carbonized.

Nowhere does 10/678,725 even remotely disclose or suggest this.

Nowhere does 10/678,725 disclose any type of partially carbonized carbon fibers, let alone the partially carbonized carbon fibers Applicant claims.

Further, nowhere does 10/678,725 disclose or remotely suggest the friction material structure Applicant claims.

Applicant respectfully submits that the Examiner has failed to make out a case of unpatentability. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992).

Accordingly, Applicant respectfully asks that the Examiner withdraw this provisional rejection.

Applicant respectfully traverses the provisional rejection of claims 1 – 22 under the judicially created doctrine of obviousness-type double patenting over claims 1 – 4 and 6 – 17 of copending Application No. 10/666,090.

Claims 6 – 9, 12 – 13, and 29 patentably distinguish over 10/666,090 in the

recitation of the secondary layer including 5% to 35%, by weight, of partially carbonized carbon fibers, based on the weight of the fibrous base material, wherein the partially carbonized carbon fibers are 65 to 90% carbonized.

Nowhere does 10/666,090 even remotely disclose or suggest this. Nowhere does the application disclose any type of partially carbonized carbon fibers, let alone the partially carbonized carbon fibers Applicant claims.

Further, nowhere does 10/666,090 disclose or remotely suggest the friction material structure of claim 6.

Applicant respectfully submits that the Examiner has failed to make out a case of unpatentability. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992).

Accordingly, Applicant respectfully asks that the Examiner withdraw this provision rejection.

Applicant respectfully traverses the provisional rejection of claims 1 – 22 under the judicially created doctrine of obviousness-type double patenting over claims 1 – 4 and 6 – 17 of copending Application No. 10/678,599.

Claims 6 – 9, 12 – 13, and 29 patentably distinguish over 10/678,599 in the recitation of the secondary layer including 5% to 35%, by weight, of partially carbonized carbon fibers, based on the weight of the fibrous base material, wherein the partially carbonized carbon fibers are 65 to 90% carbonized.

Nowhere does 10/678,599 even remotely disclose or suggest this.

Nowhere does the application disclose any type of partially carbonized carbon fibers, let alone the partially carbonized carbon fibers Applicant claims.

Further, nowhere does 10/678,599 disclose or remotely suggest the friction material structure of claim 6.

Applicant respectfully submits that the Examiner has failed to make out a case of unpatentability.

Accordingly, Applicant respectfully asks that the Examiner withdraw this provisional rejection.

Applicant respectfully traverses the provisional rejection of claims 1 – 22 under the judicially created doctrine of obviousness-type double patenting over claims 1 – 26 of U.S. Patent No. 5,998,307.

Claims 6 – 9, 12 – 13, and 29 patentably distinguish over 5,998,307 in the recitation of the secondary layer including 5% to 35%, by weight, of partially carbonized carbon fibers, based on the weight of the fibrous base material, wherein the partially carbonized carbon fibers are 65 to 90% carbonized.

Nowhere does the patent even remotely disclose or suggest this. Nowhere does the patent disclose the partially carbonized carbon fibers Applicant claims.

Further, nowhere does 5,998,307 disclose or remotely suggest the friction material structure of claim 6.

Applicant respectfully submits that the Examiner has failed to make out a case of unpatentability.

Accordingly, Applicant respectfully asks that the Examiner withdraw this provisional rejection.

Applicant respectfully traverse the provisional rejection of claims 1 – 22 under the judicially created doctrine of obviousness-type double patenting over claims 1 – 33 of U.S. patent No. 6,182,804.

Claims 6 – 9, 12 – 13, and 29 patentably distinguish over the patent in the recitation of the secondary layer including 5% to 35%, by weight, of partially carbonized carbon fibers, based on the width of the fibrous base material, wherein the partially carbonized carbon fibers are 65 to 90% carbonized.

Nowhere does 6,182,804 even remotely disclose or suggest this. Nowhere does 6,182,804 disclose the partially carbonized carbon fibers Applicant claims.

Further, nowhere does 6,182,804 disclose or remotely suggest the friction material structure of claim 6.

Applicant respectfully asks that the Examiner withdraw this provision rejection.

Applicant respectfully traverses the provisional rejection of claims 1 – 22 under the judicially created doctrine of obviousness-type double patenting over claims 1 – 23 of U.S. Patent No. 6,001,750.

Claims 6 – 9, 12 – 13 and 29 patentably distinguish over 6,001,750 in the recitation of the secondary layer including 5% to 35%, by weight, of partially carbonized carbon fibers, based on the weight of the fibrous base material, wherein the partially carbonized carbon fibers are 65 to 90% carbonized.

Nowhere does the patent even remotely disclose or suggest this. Nowhere does 6,001,750 disclose the partially carbonized carbon fibers Applicant claims.

Further, nowhere does the patent disclose or remotely suggest the friction material structure of claim 6.

Applicant respectfully submits that the Examiner has failed to make out a case of unpatentability.

Accordingly, Applicant respectfully asks that the Examiner withdraw this provisional rejection.

10/678,720

01168/BW00076

Applicant respectfully submits that claims 6 – 9, 12 – 13 and 29 are in condition for allowance and respectfully ask that the Examiner pass the claims to issue.

Respectfully submitted,

EMCH, SCHAFFER, SCHAUB
& PORCELLO CO., L.P.A.



Patrick P. Pacella
Reg. No. 25,463

P.O. Box 916
Toledo, Ohio 43697
Ph: (419) 243-1294
Fax (419) 243-8502
PPP/kab